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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,907	01/26/2004	Patrick Mitchel Howard Lumley	SIM.07/D1	2787

25871 7590 01/27/2006  
SWANSON & BRATSCHUN L.L.C.  
1745 SHEA CENTER DRIVE  
SUITE 330  
HIGHLANDS RANCH, CO 80129

EXAMINER
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RAO, G NAGESH

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,907	<b>Applicant(s)</b> LUMLEY ET AL.	
	<b>Examiner</b> G. Nagesh Rao	<b>Art Unit</b> 1722	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1) Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

In view of the after final response filed on 10/21/05, the finality of the last office action is revoked and a new grounds of rejection is set forth below.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2) Claims 1-7 rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 1-7 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the reply filed 10/21/05. In that paper, applicant has stated diffuser bar is an elongated body size to fit into a bore of said distribution bar, with a centering device coupled to said elongate body for engaging at least one surface of said bore of said distribution bar, and this statement indicates that the invention is different from what is defined in the claim(s) because applicant's

received a patent on said distribution system in Lumley (US Patent No. 6,716,015) as can be seen in Claims 1-13.

What it boils down to, is that applicants have phrased claim 1 in a manner that is a bit off from what exactly they are trying to claim. According to applicant's specification the distribution bar is apart of the distribution system, which entails a bore (68), distribution bar (62), and diffuser bar (90). Applicant's already received a patent for the system including the bore (68) and distribution bar (62), and now applying for a patent on the diffuser bar (90) as interpreted from claim 1 in the preamble, a "diffuser for a distribution system for use in a pastillation machine, said diffuser comprising:..." The diffuser bar (90) does not comprise of a bore (68) nor a distribution bar (62), as might the distribution system consist of, but instead the diffuser bar is an elongated metal body with a series of alternating pairs of tabs coupled to said body to aid in the function of being a centering device when inserted into the bore (68) of the distribution bar (62).

Applicant however has failed to properly word and claim what it is exactly they are attempting to receive a patent on.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3) Claims 1-3 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Freeman (US Patent No. 4,764,409).

From the aforementioned, examiner has determined applicant is attempting to claim an elongated bar made of steel with a series of pairs of alternating tabs, that is capable (Recitation of Intended Use) of being used as an insert for a distribution system for use in a pastillation machine.

Feeman 409 teaches a metallic insert (Figure 2 Element 12 also see other embodiments Figure 4-5) including a plurality of projecting fingers or bent portions (14 and 16) that are coupled to the metallic's insert elongated body aiding in centering the device when used as a reinforcement element, wherein the elongated metallic insert (reading on a diffuser) comprising a series of tabs extending outwardly from opposing edges of said bar, formed in alternating pairs

bent in opposing directions (See Abstract, Col 2 Lines 20-68 and Col 3 Lines 1-49).

The metallic's insert of Freeman 409 is capable of being used in a manner where the centering device maintains said elongate body generally spaced from at least one wall of said bore of a distribution bar of said distribution system, but that is interpreted as a recitation of intended use and bears no weight to the structural limitations put forth on the claimed "diffuser".

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4) Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (US Patent No. 4,764,409) in view of Wycech (US Patent No. 6,003,274) in further view of Thornton *et.al.* "Fundamentals of Engineering Materials" P. 441.

From the aforementioned Freeman 409 teaches an elongated metallic insert (reading on a diffuser) comprising a series of tabs extending outwardly from opposing edges of said bar, formed in alternating pairs bent in opposing directions.

However the metallic insert of Freeman 409 fails to teach that the metallic insert being comprised of steel or in particular 316 stainless steel. Albeit a metallic insert and steel being a type of metal, it would be an obvious choice to use steel.

In a patent pertaining to lightweight structural reinforcement inserts, Wycech 274 teaches metallic insert that can be comprised of steel (See Abstract, Col 3 Lines 32-45, Col 4 Lines 32-55, and Col 5 Lines 51-61).

The specificity of 316 stainless steel would be known to be of use, due these desired traits and well known as a high strength steel. To further substantiate this claim Thornton *et.al.* teaches that it is known to utilize 316 stainless steel given its listing as a standard stainless steel.

It would be obvious at the time of the invention to one with ordinary skill in the art to modify the teachings of Freeman 409 with that of Wycech, in order to

utilize the fact that it is known to have higher resistance to oxidation and corrosion in many natural and man made environments, especially 316 stainless steel which is generally known by its history as the next most common grade of steel used in particular for its alloy addition of molybdenum in preventing specific forms of corrosion.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Nagesh Rao whose telephone number is (571) 272-2946. The examiner can normally be reached on 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GNR

  
ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP ~~1300~~ 1700  
1/23/06